

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERRY LEE BROWN,

Defendant-Appellant.

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UNPUBLISHED

September 18, 1998

No. 197429

Saginaw Circuit Court

LC No. 95-010892 FH

Before: Hood, P.J., and Griffin and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right the consecutive five to twenty year sentences imposed by the circuit court on his convictions for possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and conspiracy to commit that crime, MCL 750.157(a); MSA 28.354(1). We remand for resentencing.

The trial court held a sentencing hearing on July 9, 1996. At the hearing, the trial court initially imposed concurrent sentences of five to twenty years for each conviction. Thereafter, the prosecutor stated that she believed the sentences should run consecutively. The court indicated that it needed to review the statute and that the sentences would be concurrent unless the statute required that they be consecutive. Defense counsel started to argue that if the sentences had to be consecutive, the trial court should sentence defendant to a minimum of two and one-half years for each conviction. The record indicates that the trial court did not hear defendant's entire argument on that issue. Rather, it stated that it wanted to look at the statute first unless defense counsel was willing to concede that the sentences were to be consecutive. Defense counsel would not concede that the sentences should be consecutive. At that point, the court stated that the prosecutor should get a copy of the statute, and that it would further address the issue prior to defendant being transported. The record indicates that no additional hearing was held. On July 31, 1996, the court entered a judgment of sentence imposing consecutive five to twenty year sentences on both counts.

As a preliminary matter, we find that the trial court's initial pronouncement imposed an original sentence of concurrent five to twenty year sentences for each conviction. This original sentence was

never vacated by the trial court and remained defendant's sentence until the modified judgment of sentence was entered. In *People v Ceteways*, 156 Mich app 108, 123; 401 NW2d 327 (1986), this Court stated:

[O]ne could not say that defendant had not been sentenced. The sentence might not be entered, that is, reduced to writing, until later, but that is often the case with orders of the court. The order of sentence is effective from the moment that the judge gives it, not from the moment when it is written down. Defendant had been sentenced and could have been sent immediately to prison. The trial court's decision to resentence at a later time merely reserved its right to modify its sentence in the interests of justice. It did not vacate the sentence it had already imposed.

Recently, the Supreme Court also indicated that pronouncement of a sentence, not entry of the judgment of sentence, is the controlling event. See *People v Miles*, 454 Mich 90, 96; 559 NW2d 299 (1997) where the Court noted that a trial court's authority typically ends when a valid sentence is *pronounced* (emphasis added).

In this case, although the trial court left open the issue of whether the originally imposed sentence was valid and whether the sentence needed to be modified, it never vacated its original sentence. Later, the trial court modified the pronounced sentence when it issued the written judgment of sentence. Defendant was not afforded any opportunity to make further arguments to the court with regard to the sentence prior to the modification. Defendant argues that the trial court's modification amounted to resentencing. We agree because the original sentence imposed was different from the originally imposed sentence in that it increased defendant's total minimum time to be served from five years to ten years without additional input from defendant.

The original sentence imposed by the trial court was clearly invalid and needed to be modified. Consecutive sentences are required for defendant's convictions, and concurrent sentences would have been erroneous. *People v Denio*, 454 Mich 691; 564 NW2d 13 (1997). A trial court may correct an invalid sentence even though it may not modify a valid sentence after it has been imposed except as provided by law. MCR 6.429(A); *People v Wybrecht*, 222 Mich App 160; 564 NW2d 903 (1997). Therefore, the trial court had authority, and in fact expressly retained jurisdiction, to correct the invalid sentence. The issue, however, is whether the trial court had the authority to modify the invalid sentence without a resentencing hearing.

We hold that the trial court did not have authority to modify the original sentence without a formal resentencing hearing. In *People v Roberto Thomas*, 223 Mich App 9; 566 NW2d 13 (1997), a panel of this Court held that a formal resentencing is required before a trial court may change improper concurrent sentences into correct consecutive sentences. See also *People v Mapp*, 224 Mich 431, 432; \_\_\_NW2d\_\_\_(1997). In making its ruling, however, the *Thomas* court appeared to create an exception to the rule that a formal resentencing is required. It referred to *People v Kaczorowski*, 190 Mich App 165, 174; 475 NW2d 861 (1991), which ruled that if the trial court clearly articulates that it would not have sentenced defendant any differently had it known that the sentences must run

consecutively as opposed to concurrently, resentencing is not necessary because it would waste judicial time and resources. *Thomas, supra* at 13.

In this case, plaintiff argues that the trial court indicated that it had no intention of altering the five to twenty year sentences for each conviction whether they were imposed concurrently or consecutively. We note that the trial court did state the sentences would remain concurrent unless the court had to make them consecutive. However, the trial court did not comment on whether it would consider lowering the minimum sentences if consecutive sentencing was required. It simply indicated that it wanted to look at the statute before listening to any further defense counsel argument in favor of lower minimum sentences if the statute required consecutive sentencing. The court indicated that unless defendant wanted to concede the issue of consecutive sentencing, it did not want to take further action on the case at that time. Because no further action was taken with input from the parties and because defendant was not given a full opportunity to argue for lower minimums for each conviction, we conclude that a resentencing hearing is necessary.

Remanded for resentencing. We do not retain jurisdiction.

/s/ Harold Hood

/s/ Richard Allen Griffin

/s/ Peter D. O'Connell